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10/059,088	01/28/2002	Michael Wayne Brown	AUS920010516US1	5267

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/059,088
Filing Date: January 28, 2002
Appellant(s): BROWN ET AL.

MAILED

AUG 10 2004

Technology Center 2600

Amy J. Pattillo, Attorney
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 14, 2004.

Art Unit: 2676

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. However, the identified US Patent Application Serial No. 10/059,011 is no longer under Appeal since prosecution was reopened with new ground(s) of rejection.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-33 do not stand or fall together, however, does not provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because even though the Appellant purports to be responsive to the requirement 37 CFR 1.192(c)(8)(iii), Appellant has not, **for each rejection under 35 U.S.C. 102**, specified

Art Unit: 2676

the errors in the rejection and why the rejected claims are patentable under 35 U.S.C. 102, including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection, as required under said CFR. Furthermore in the Appeal Brief under "Distinguishing the Groups", Appellant is silent on Group II (claims 2, 5-6, 8-10, 13, 17, 19-21, 24, 27-28 and 30-32). Moreover under "Distinguishing the Groups", Groups III and IV merely point out an additional claim element or feature, however 37 CFR 1.192(c)(7) last sentence states "Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable."

Furthermore in Appeal Brief, page 8, first paragraph, Appellant asserts "Then the claims in Group V teach applying the present invention to another type of "non-inactive computing task," the progress of an installation program." However, this is not claimed in any of the elements of claims 7, 18 and/or 29, which form part of Group V according to Appellant's VII. Grouping of Claims. Therefore within Group V claims 7, 18 and 29 should stand or fall, apart from claims 11, 22 and 33. Claims 7, 11, 18, 22, 29 and 33 are misconstrued on Group V.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,651,107

Frank et al.

7-1997

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6, 8-10, 12-17, 19-21, 23-28 and 30-32 are rejected under 35 U.S.C. 102(b).

This rejection is set forth in a prior Office Action, mailed on March 11, 2004.

Art Unit: 2676

(11) *Response to Argument*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6, 8-10, 12-17, 19-21, 23-28 and 30-32 stand rejected under 35 U.S.C. 102(b) as being disclosed by Frank et al., (US Patent Number 5,651,107), hereinafter referred to as Frank. This rejection is set forth in prior Office Action, Paper No. 7, paragraph 5.

For Group I:

With regard to the independent claims for this first claim group, claims 1, 12 and 23 are exemplified in appellant's argument. Claim 1 reads as:

1. A method for changing alpha levels of a displayable object, said method comprising the steps of:

determining an alpha level to represent a status of a non-interactive computing task; and
graphically adjusting a transparency of at least a selected portion of a displayable object associated with said non-interactive computing task according to said alpha level, such that said status of said non-interactive computing task is displayed by said associated displayable object.

Starting on page 4, appellant alleges 'Frank does not anticipate the invention of claim 1 because Frank does not teach expressly or inherently the step of "determining an alpha level to represent a status of a non-interactive computing task." Further, Frank does not enable this step.' Moreover the Appellant's argument (page 5, last paragraph) is directed specifically that Frank does not teach, "determining an alpha value that represents anything, but merely teaches enabling a user to selectively adjust alpha values of windows so the graphical objects displayed in multiple windows are concurrently visible."

Frank discloses “displayable objects” and “non-interacting computing task” in col. 2, lines. 36-38 at [The windows include defined areas having window features such as text, icons and buttons corresponding to functions to be executed by the CPU.] Wherein windows, text, icons and buttons correspond to “displayable objects” which is in accordance with the Appellant’s definition of “displayable object” on page 6, lines 25-28 at “A displayable object may include, for example, an application window, an icon, a video representation, and a graphical representation.” Herein [text, icons and buttons] correspond to “graphical representations.”

Frank’s [corresponding to functions to be executed by the CPU] is parallel to the Appellant’s definition of “non-interactive computing task” on page 6, lines 17-19 at “A non-interactive task may include, for example, usage of a processor, memory, a sound card, a graphics card, a storage device, and network bandwidth.” Furthermore more page 11, line 29 – page 12, line 5 at “Non-interactive computing tasks are those not performed in direct response to a user input. For example, memory and CPU utilization are not typically performed in direct response to a user input, but are utilized as a function of an application functioning within the computer system. In an example, where a user selects a button associated with an audio function, the interactive computing task is the actual output of the audio in response to the selection while the non-interactive computing tasks include at least usage of a sound card, memory, and CPU.” Even furthermore on page 12, lines 6-11 at “Advantageously, in the present invention, non-interactive computing tasks may include, but are not limited to, use of memory, use of CPUs, number of CPUs utilized, use of graphics cards for two-dimensional (2D) and three-dimensional (3D) graphics, use of a sound card, number of threads, use of storage devices, and net

Art Unit: 2676

bandwidth.” Therefore [window features such as text, icons and buttons corresponding to functions to be executed by the CPU] also corresponds to “non-interactive computing task.”

Because the underlying windows are rendered visible to the user, as taught by Frank col. 2, lines 46-55, the various text, icons and buttons associated with each window would inherently be associated with the same alpha value for its particular window. Consequently as multiple windows are merged through alpha blending so too are each of the window associated text, icons and buttons. Furthermore Frank sets each window’s alpha to a level between the range of 0 and 1, col. 2, line 63 – col. 3, line 4. Herein and both within Frank and the Appellant’s application “alpha value” is congruent with “alpha level”.

While it has been shown that Frank discloses “an alpha level to represent a status of a non-interactive computing task”, it is the Appellant’s position that Frank does not teach the “determining” portion. For Frank’s user (col. 2, line 63 – col. 3, line 4) to set an alpha value to each window between the range of 0 and 1, where a setting of 1 results in the window being opaque, and 0 setting resulting in the window being fully transparent, the alpha value is inherently “determined” by the time it is set. This is analogous to the catch of a ball; it is inherent that one must “determine” its range, velocity and positional values prior to the actual catch. So it is with Frank’s user to set an alpha value, the value is inherently determined from between the range of 0 and 1.

The Appellant’s contention (Appeal Brief, page 5, last sentence) that Frank does not teach the step of **first** determining an alpha value that represents the status of a non-interactive computing task and **then** setting the alpha value for a window associated with that non-interactive computing task to that alpha value” is not what has been claimed in independent

Art Unit: 2676

claim one. The coordinating conjunction in claim one is “and”; there is no if – then, first – then, what – then nor any temporal designated words, terms or indications within any of the independent claims. The coordinating conjunction “and” gives each of the elemental claim features equal value and in no way lends temporal sequence to these sentence fragments.

Although the Appellant’s claim 1 does not reveal how or by whom or what transparency is graphically adjusted, Frank does reveal this in col. 2, line 43 – col. 3, line 1. Furthermore since Frank’s windows can be made active or inactive, whereby the inactive window is transparent, thus implies a complete certainty of some alpha value that Frank’s user has selected in the range between of 0 and 1, but not equal to 0 since that would be fully opaque, represents the inactive window that it is transparent and thereby has an already determined alpha value.

Appellant’s argument on page 6, first paragraph further carries the concept of a “detecting element” supposedly for the “determining an alpha level” and as such has already been addressed in Frank as being inherent prior to the setting of an alpha value. Further on, page 6, end of first paragraph, Appellant argues that Frank does not teach, “determining a status of a non-interactive computing task”, but then this is not claimed in any of the independent claims. That claim feature reads, “determining an alpha level to represent a status of a non-interactive computing task” and Frank does teach this as detailed for status being active or inactive with associated alpha value.

Appellant also contends on page 6, second paragraph, that Frank’s user setting of an alpha value is in conflict with Appellant’s definition that a “non-interactive computing task” is generally one that is not performed in direct response to a user input. So that Frank’s user has actually interacted by the mere act of setting the alpha value. However the independent claim

Art Unit: 2676

feature states, “A method for changing alpha levels of a displayable object, said method comprising the steps of: determining an alpha level to represent a status of a non-interactive computing task.” Frank’s “displayable objects” that represent a “non-interactive computing tasks” are [text, icons and buttons corresponding to functions to be executed by the CPU (Frank, col. 2, lines 36-38]. Frank’s user only selectively sets the alpha value of each window (or “object”) of the display system – [col. 2, lines 56-59], with associated window features such as text, icons and buttons corresponding to non-interactive computing task [functions to be executed by the CPU]. Furthermore the active and inactive windows [Frank, col. 10, lines 14-23] are representations of the status of the associated text, icons and buttons illustrated by Frank.

Still furthermore while Appellant gives reference to the specification (Brown et al. page 12, lines 1-5): “In an example, where a user selects a button associated with an audio function, the interactive computing task is the actual output of the audio in response to the selection while the non-interactive computing tasks include at least usage of a sound card, memory, and CPU.”, this is not unlike Frank’s [The windows include defined areas having window features such as text, icons and buttons corresponding to functions to be executed by the CPU.] – col. 2, lines 36-38.

On page 7 of the Appeal Brief, second paragraph, Appellant compares Frank’s determining and selecting of an alpha value in contrast with the specification which discloses a computer performed step of computing an alpha level to represent a current function of the computing system and then automatically setting the transparency of a window associated with that function according to the computed alpha level. Supposedly the contrast reference is made to the specification, page 18, lines 7-15, where “the transparency of windows adjusts over time as

Art Unit: 2676

the status of non-interactive computing tasks adjust.” Nowhere within the four corners of the Appellant’s disclosure is there mention of “a computer performed step of computing an alpha level” nor “automatically setting the transparency of a window.” Even if this is inherent in the specification, Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (“During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.”).

Furthermore the specification also discloses, “a user interface in which alpha levels of application windows are adjusted” on page 16, lines 18-23; and page 18, lines 1-5, similar to that taught by Frank.

Appellant argues on page 7, second and last paragraphs, with regard to Group 5, claims 7, 11, 18, 22, 29 and 33 that were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. These claims would be allowable only because of the added limitation of “determining said alpha level, wherein said resulting transparency oscillates within

Art Unit: 2676

said displayable object according to a frequency spectrum of a sound intended for output in association with said displayable object.”

While the misconstruing of Group V by the claim element, “non-interactive computing task the progress of an installation program” (Appeal Brief, page 8, first paragraph) was addressed, *supra* under **(7) Grouping of Claims**, the Appellant’s allegation that Frank does not teach “determining an alpha level to represent other types of non-interactive computing tasks in general” (Appeal Brief, page 8, first paragraph, last sentence fragment) is not found in any of the Appellant’s claims.

Given that Frank has been shown to explicitly and/or inherently disclose the independent claims of Group I, and since Groups II, III, IV and V depend from Group I, affirmation of the rejection to all Group claims is therefore respectfully requested.

Group III:

In Group III claims 3, 14 and 25, “detecting said status for at least one from among usage of a processor, memory, a sound card, a graphics card, a storage device, and network bandwidth” is disclosed by Frank as detailed in final office action, paper number 7, sections 5A and 5C. Wherein [The windows include defined areas having window features such as text, icons and buttons corresponding to functions to be executed by the CPU.]; [executed by the CPU] corresponds to “usage of a processor”; [windows include defined areas having window features such as text, icons and buttons] corresponds to “displayable object”; coupled with [Thus, the window 260 not having been rendered "active" is transparent to the actions of the user, thereby permitting the user to operate on data disposed in an underlying window such as, for example, accessing the shut off alarm box 277 in the example of FIG. 10. It will be noted that although

Art Unit: 2676

buttons 285 to 288 and 280 to 283 have been shown to illustrate one method for designating a window as active, a variety of other methods such as icons, highlighted title bars, and mechanisms may be used to accomplish similar results.] wherein “detecting said status” corresponds to [window 260 not having been rendered "active" is transparent] or [buttons 285 to 288 and 280 to 283 have been shown to illustrate one method for designating a window as active, a variety of other methods such as icons, highlighted title bars, and mechanisms may be used to accomplish similar results]; and “detecting” is inherent prior to rendering active or inactive via alpha transparency.

In Appeal Brief, page 10, first whole paragraph, asserts, “Nowhere does Frank teach detecting the status of a processor, memory, sound card, storage device, or network bandwidth.” However, Group III does not claim, “detecting the status of a processor...”, but more to the point, “**detecting said status** for at least one from among usage of a processor...” is claimed. The antecedent basis for “said status” is “an alpha level to represent a status of a non-interactive computing task” as revealed in claim one. Since Frank’s [window features such as text, icons and buttons corresponding to functions to be executed by the CPU.] correspond to “non-interactive computing task” and [window 260 not having been rendered "active" is transparent] or [buttons 285 to 288 and 280 to 283 have been shown to illustrate one method for designating a window as active, a variety of other methods such as icons, highlighted title bars, and mechanisms may be used to accomplish similar results] correspond to “representative alpha level”, Group III is disclosed by Frank.

Art Unit: 2676


Group IV:

Group IV, claims 4, 15 and 26 are disclosed as cited in Final Office Action, section 5D, by Frank, supra for claim 1 and col. 1, lines 63-65.

Frank's disclosure of [In systems with multiple bits, typically at least eight, it is possible to vary the intensity and color of the pixels on the display. – col. 1, lines 63-65] coupled with Frank's disclosure, supra for claim 1, [Each display element ("pixel") comprising the display is represented by multiple bits in a computer frame buffer memory coupled to the CPU. An alpha value (.alpha.) is associated with the intensity of each pixel of the display, such that multiple images may be blended in accordance with a predefined formula utilizing the .alpha. values. By setting the .alpha. values appropriately, transparency may be accomplished such that data associated with underlying windows may be rendered visible to the user. Effectively, the present invention merges multiple images through .alpha. "blending" such that several images appear transparently on top of one another. The present invention, through the selective use of .alpha. blending, permits underlying windows to display data visible to the user through windows which are overlaid above an underlying window. – col. 2, lines 40-55] inherently discloses "a color level to represent said non-interactive computing task; and graphically adjusting said color with said transparency according to said color level of said at least said selection portion of said displayable object associated with said non-interactive computing task." Particularly since Frank discloses claim 1 for "a displayable object", whereby "the displayable object" emits illumination of "a color level", even if the color level is red, green, blue, white (presence of all colors), or gray (absence of all colors or zero color level, but still "a color level"). So given the illumination

Art Unit: 2676

of whatever color level is being emitted, Frank inherently disclosures claim 4. Here again “a color level” is inherently determined “determining” prior to it being set or varied.

Although the Appellant desires the instant application as claimed to be unique, these claimed features are well know in the prior art of which Frank has been given as just one representative of the prior art. These features have largely been limited to and analogous with, for example, the horizontal status bar showing the progress of downloading software, wherein a totally transparent portion of the display screen a bar that becomes fully opaque by progressively starting from one end, usually the left, and proceeding toward the opposite end until completion of the download or installation. 

Further still is the on-screen-display (OSD) for television where a portion of the background video image is fully transparent to the rendered opaque foreground of the displayed electronic menu selector, or even the cell phone transparent icons representing instant messaging. More still is the transparent portion of the computer display screen that reveals an opaque rotating hourglass while saving files to the hard-drive. The Appellant is simply trying to get protection for something that is notoriously known.

For the above reasons, it is believed and respectfully requested that the rejections be sustained.

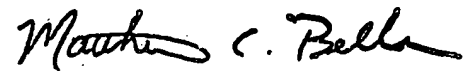
Art Unit: 2676

Respectfully submitted,

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August 9, 2004

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